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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92044624
Party	Plaintiff J. Christopher Carnovale
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Attachments	Carnovale.pdf (3 pages)(141250 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

J. CHRISTOPHER CARNOVALE	:	
Petitioner	:	
v.	:	Cancellation No. 92044624
THE BRAND EXPERIENCE LLC	:	
Registrant	:	

**PETITIONER'S REPLY BRIEF IN SUPPORT OF MOTION FOR JUDGMENT
AND FOR POSTPONMENT OF TESTIMONY OPENING**

Petitioner is entitled to judgment in this proceeding. Nothing in the untimely response that Registrant submitted on December 1 even remotely calls into question that conclusion. Moreover, the response should not be considered because Registrant never served it on Petitioner. Petitioner became aware of it only a few days ago, and only by reviewing the TTAB website to obtain an update on this proceeding.

On September 15, 2010, the Board granted Petitioner's motion to compel and ordered Registrant to answer Petitioner's second set of interrogatories and request for production within thirty (30) days. Registrant never sought an extension and willfully disobeyed the Board's order. Accordingly, on November 2, 2010 Petitioner filed a motion seeking default judgment and requesting an extension of all proceeding deadlines pending the Board's decision (the "Motion"). Under the Board's rules, Registrant's deadline to respond to the Motion was November 22, 2010. Registrant did not file a response by that deadline nor did it seek any extension.

Recently, however, Petitioner's counsel noted from the Board's website that Registrant filed an untimely response to the Motion on December 2, 2010. The response did not contain a certificate of service and Registrant did not serve it on Petitioner's counsel. In its response,

Registrant seeks to justify its non-compliance with the Board's order by contending that it does not understand what additional information it is required to produce in response to the outstanding discovery requests. There is no merit to that contention as Registrant was represented by counsel when the discovery requests were served and the deficiencies in the responses were identified in writing.

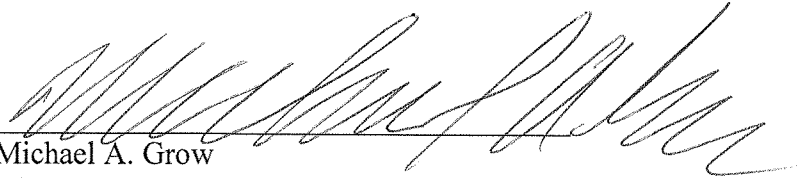
Registrant's other arguments are meritless as well and provide no basis for denying the motion for judgment. Because the Board already granted the motion to compel, and because Registrant never supplemented its discovery responses as ordered, Petitioner is entitled to judgment. The allegation that the relief sought results from "procedure" merely reflects Petitioner's refusal to comply with the Board's order and the procedures governing these proceedings. The Board may enter judgment against any party that does not comply with its orders, including discovery orders. *See, e.g.*, TMBP § 527.01 (citing cases). As the evidence attached to Petitioner's motion for judgment demonstrates, the argument that Registrant does not have additional discovery to produce is simply untrue. Registrant's prior counsel repeatedly advised that he was in the process of preparing the very supplemental responses that Registrant now claims do not exist or cannot be prepared.

Registrant clearly does not intend to comply with the Board's rules and deadlines. As a result, entry of judgment against it is appropriate. *See id.*

If the Board declines to enter default judgment, Petitioner requests that all deadlines in this proceeding be reset, including the opening of testimony.

J. CHRISTOPHER CARNOVALE

By:



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December 17, 2010

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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing is being served upon Mark Schmidt of Registrant at 1521 Alton Road, #8, Miami Beach, Florida 33139 by first class mail, postage prepaid, on December 17, 2010.

